

From: [Gaffney, Michael J. \(CIV\)](#)
To: [Ethan Szumanski](#)
Cc: [Chance Weldon](#); [Nate Curtisi](#); [Matt Miller](#); [Rob Henneke](#); [Ryan Walters](#)
Subject: RE: 5:23cv34 - Texas v. Garland - Two-Week Continuance
Date: Monday, October 23, 2023 4:44:12 PM
Attachments: [image001.png](#)
[2023.10.23 - Texas v. Garland Joint Motion for Continuance of Trial Date - circ v2 w Texas's signature block revised 530pm.docx](#)
[2023.10.23 - Texas v. Garland Proposed Order Granting Joint Motion for Continuance of Trial Date - circ v2 - revised 530pm.docx](#)

All,

Your earlier suggestion that we might have to file competing proposals was prescient, unfortunately.

As I mentioned on this morning's call when we were discussing whether we could agree now not to challenge declarations on hearsay or other grounds, I said that we could not make that determination until we saw the declarations. After further consultation with the clients, and to avoid leaving the court with the impression that we are currently in a position to know how we will recommend proceeding after the declarations are exchanged, we have proposed that the court simply vacate the current trial date, require the parties to exchange declarations (we request by November 6 instead of by November 1 because one agency needs additional time), and then have the parties submit a status report regarding further proceedings. Perhaps no significant discovery (or maybe no discovery at all) will be required, but the purpose here is to make clear that we can't answer that yet.

Please have a look at the attached and make any necessary changes/additions to your section. I have made all changes to the motion in redline. Please accept those changes and then add, in redline, any changes/additions of your own. The proposed order has also been revised, but not in redline (the changes, including with the two competing proposals, are obvious). Please feel free to make any corresponding edits there.

I had hoped that this would be an easier endeavor. Thanks in advance for taking another pass at this.

Mike

From: Ethan Szumanski <Ethan.Szumanski@oag.texas.gov>
Sent: Monday, October 23, 2023 3:05 PM
To: Gaffney, Michael J. (CIV) <Michael.J.Gaffney@usdoj.gov>
Cc: Chance Weldon <cweldon@texaspolicy.com>; Nate Curtisi <ncurtisi@texaspolicy.com>; Matt Miller <mmiller@texaspolicy.com>; Rob Henneke <rhenneke@texaspolicy.com>; Ryan Walters <Ryan.Walters@oag.texas.gov>
Subject: [EXTERNAL] RE: 5:23cv34 - Texas v. Garland - Two-Week Continuance

Mike,

We appreciate you making those changes. We've attached the version of the Joint Motion for Continuance that has our signature block. Let us know if there is anything else that you need from us as far as filing.

EXHIBIT

1

exhibitster.com

Thanks,



Ethan Szumanski
Special Counsel
Special Litigation Division
Office of the Texas Attorney General
P.O. Box 12548 (MC 009)
Austin, TX 78711-2548
Phone: (512) 717-1255
Fax: (512) 457-4410
ethan.szumanski@oag.texas.gov

From: Gaffney, Michael J. (CIV) <Michael.J.Gaffney@usdoj.gov>
Sent: Monday, October 23, 2023 1:17 PM
To: Ethan Szumanski <Ethan.Szumanski@oag.texas.gov>
Cc: Chance Weldon <cweldon@texaspolicy.com>; Nate Curtisi <ncurtisi@texaspolicy.com>; Matt Miller <mmiller@texaspolicy.com>; Rob Henneke <rhenneke@texaspolicy.com>; Ryan Walters <Ryan.Walters@oag.texas.gov>
Subject: RE: 5:23cv34 - Texas v. Garland - Two-Week Continuance

Understood. I just quickly circled back with the DOJ folks who had sought the later date and confirmed we can make November 20 work. (The agencies are still reviewing, but I think they will be more focused on the deadline to exchange declarations, which remains November 1.)

See attached for revised versions of both documents. Two changes in the attached. First, the proposed trial date has moved from November 29 to November 20. Second, the deadline for exhibit list has been moved up to before the proposed trial date.

Mike

From: Ethan Szumanski <Ethan.Szumanski@oag.texas.gov>
Sent: Monday, October 23, 2023 2:01 PM
To: Gaffney, Michael J. (CIV) <Michael.J.Gaffney@usdoj.gov>
Cc: Chance Weldon <cweldon@texaspolicy.com>; Nate Curtisi <ncurtisi@texaspolicy.com>; Matt Miller <mmiller@texaspolicy.com>; Rob Henneke <rhenneke@texaspolicy.com>; Ryan Walters <Ryan.Walters@oag.texas.gov>
Subject: [EXTERNAL] RE: 5:23cv34 - Texas v. Garland - Two-Week Continuance

Mike,

Thank you for putting this together. Unfortunately, we cannot agree to extending the trial date beyond the agreement all parties reached this morning. We believe that November 20 provides more than enough time for all parties to present their case and their evidence. Thus, unless you agree to stick with the previously agreed trial date of November 20 and the accompanying deadlines, we may need to file separate proposed trial dates and accompanying deadlines.

Let us know your thoughts. Some of us may also be available to hop on a quick call this afternoon should a call prove necessary.

Best,



Ethan Szumanski
Special Counsel
Special Litigation Division
Office of the Texas Attorney General
P.O. Box 12548 (MC 009)
Austin, TX 78711-2548
Phone: (512) 717-1255
Fax: (512) 457-4410
ethan.szumanski@oag.texas.gov

From: Gaffney, Michael J. (CIV) <Michael.J.Gaffney@usdoj.gov>
Sent: Monday, October 23, 2023 12:01 PM
To: Ethan Szumanski <Ethan.Szumanski@oag.texas.gov>
Cc: Chance Weldon <cweldon@texaspolicy.com>; Nate Curtisi <ncurtisi@texaspolicy.com>; Matt Miller <mmiller@texaspolicy.com>; Rob Henneke <rhenneke@texaspolicy.com>; Ryan Walters <Ryan.Walters@oag.texas.gov>
Subject: RE: 5:23cv34 - Texas v. Garland - Two-Week Continuance

All: See attached for draft motion and proposed order. This is still under review here.

One important note: we discussed a proposed continuance to November 20. After connecting with folks here, for various reasons (I'm happy to explain them by phone), I've changed the requested trial date to November 29 (that's the Wednesday of the following week). In accordance with that change, I've moved the deadline for the exhibit list to November 27. If you would like to push back slightly the deadline for the exchange of declarations (to, say, November 3), that's certainly fine with me. I just want to leave enough time to confer, hopefully reach agreement on admissibility, and file any responsive declarations.

Thanks,

Mike

From: Ethan Szumanski <Ethan.Szumanski@oag.texas.gov>
Sent: Monday, October 23, 2023 10:46 AM
To: Gaffney, Michael J. (CIV) <Michael.J.Gaffney@usdoj.gov>
Cc: Chance Weldon <cweldon@texaspolicy.com>; Nate Curtisi <ncurtisi@texaspolicy.com>; Matt Miller <mmiller@texaspolicy.com>; Rob Henneke <rhenneke@texaspolicy.com>; Ryan Walters <Ryan.Walters@oag.texas.gov>
Subject: [EXTERNAL] RE: 5:23cv34 - Texas v. Garland - Two-Week Continuance

That works for us. Thanks, Mike.

From: Gaffney, Michael J. (CIV) <Michael.J.Gaffney@usdoj.gov>
Sent: Monday, October 23, 2023 9:45 AM

To: Ethan Szumanski <Ethan.Szumanski@oag.texas.gov>
Cc: Chance Weldon <cweldon@texaspolicy.com>; Nate Curtisi <ncurtisi@texaspolicy.com>; Matt Miller <mmiller@texaspolicy.com>; Rob Henneke <rhenneke@texaspolicy.com>; Ryan Walters <Ryan.Walters@oag.texas.gov>
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I wasn't accounting for time zones so was trying to fit in before your 11am conflict.

Let's do 10am CDT/11am EDT (so in about 15 minutes).

From: Gaffney, Michael J. (CIV)
Sent: Monday, October 23, 2023 10:42 AM
To: 'Ethan Szumanski' <Ethan.Szumanski@oag.texas.gov>
Cc: Chance Weldon <cweldon@texaspolicy.com>; Nate Curtisi <ncurtisi@texaspolicy.com>; Matt Miller <mmiller@texaspolicy.com>; Rob Henneke <rhenneke@texaspolicy.com>; Ryan Walters <Ryan.Walters@oag.texas.gov>
Subject: RE: 5:23cv34 - Texas v. Garland - Two-Week Continuance

I can hop on now if that works. We can reconvene if needed.

From: Ethan Szumanski <Ethan.Szumanski@oag.texas.gov>
Sent: Monday, October 23, 2023 10:38 AM
To: Gaffney, Michael J. (CIV) <Michael.J.Gaffney@usdoj.gov>
Cc: Chance Weldon <cweldon@texaspolicy.com>; Nate Curtisi <ncurtisi@texaspolicy.com>; Matt Miller <mmiller@texaspolicy.com>; Rob Henneke <rhenneke@texaspolicy.com>; Ryan Walters <Ryan.Walters@oag.texas.gov>
Subject: [EXTERNAL] RE: 5:23cv34 - Texas v. Garland - Two-Week Continuance

Mike,

We hope you had a nice weekend as well. Outside of 11:00 a.m. to 12:00 p.m., we are available anytime this morning. And yes, the conference line below works fine.

Best,



Ethan Szumanski
Special Counsel
Special Litigation Division
Office of the Texas Attorney General
P.O. Box 12548 (MC 009)
Austin, TX 78711-2548
Phone: (512) 717-1255
Fax: (512) 457-4410
ethan.szumanski@oag.texas.gov

From: Gaffney, Michael J. (CIV) <Michael.J.Gaffney@usdoj.gov>
Sent: Monday, October 23, 2023 9:19 AM

To: Ethan Szumanski <Ethan.Szumanski@oag.texas.gov>; Matt Miller <mmiller@texaspolicy.com>
Cc: Chance Weldon <cweldon@texaspolicy.com>; Nate Curtisi <ncurtisi@texaspolicy.com>; Rob Henneke <rhenneke@texaspolicy.com>; Ryan Walters <Ryan.Walters@oag.texas.gov>
Subject: RE: 5:23cv34 - Texas v. Garland - Two-Week Continuance

All: Hope you had a nice weekend. Would you be available to hop on the phone again this morning? Would the same conference line below work?

Mike

From: Ethan Szumanski <Ethan.Szumanski@oag.texas.gov>
Sent: Friday, October 20, 2023 3:37 PM
To: Gaffney, Michael J. (CIV) <Michael.J.Gaffney@usdoj.gov>; Matt Miller <mmiller@texaspolicy.com>
Cc: Chance Weldon <cweldon@texaspolicy.com>; Nate Curtisi <ncurtisi@texaspolicy.com>; Rob Henneke <rhenneke@texaspolicy.com>; Ryan Walters <Ryan.Walters@oag.texas.gov>
Subject: [EXTERNAL] Re: 5:23cv34 - Texas v. Garland - Two-Week Continuance

Perfect. Here is a conference line for your use:

[512-882-6743](tel:512-882-6743) (no PIN)

Thanks,
EQS

From: Gaffney, Michael J. (CIV) <Michael.J.Gaffney@usdoj.gov>
Sent: Friday, October 20, 2023 2:30:43 PM
To: Ethan Szumanski <Ethan.Szumanski@oag.texas.gov>; Matt Miller <mmiller@texaspolicy.com>
Cc: Chance Weldon <cweldon@texaspolicy.com>; Nate Curtisi <ncurtisi@texaspolicy.com>; Rob Henneke <rhenneke@texaspolicy.com>; Ryan Walters <Ryan.Walters@oag.texas.gov>
Subject: RE: 5:23cv34 - Texas v. Garland - Two-Week Continuance

Agreed that a call makes sense. I'm available at 4pm EDT/3pm CDT, if that works. Please send dial-in info (or you can reach me directly at 202-514-2356).

Talk with you soon,

Mike

From: Ethan Szumanski <Ethan.Szumanski@oag.texas.gov>
Sent: Friday, October 20, 2023 3:21 PM
To: Gaffney, Michael J. (CIV) <Michael.J.Gaffney@usdoj.gov>; Matt Miller <mmiller@texaspolicy.com>
Cc: Chance Weldon <cweldon@texaspolicy.com>; Nate Curtisi <ncurtisi@texaspolicy.com>; Rob Henneke <rhenneke@texaspolicy.com>; Ryan Walters <Ryan.Walters@oag.texas.gov>
Subject: [EXTERNAL] RE: 5:23cv34 - Texas v. Garland - Two-Week Continuance

Mike,

Thank you for reaching out to us. Rather than responding to a flurry of emails, let's discuss this matter over the phone as we also have some things that we would like to run by you. So, please let us know when you're available today to have a phone call.

Best,



Ethan Szumanski
Special Counsel
Special Litigation Division
Office of the Texas Attorney General
P.O. Box 12548 (MC 009)
Austin, TX 78711-2548
Phone: (512) 717-1255
Fax: (512) 457-4410
ethan.szumanski@oag.texas.gov

From: Gaffney, Michael J. (CIV) <Michael.J.Gaffney@usdoj.gov>
Sent: Friday, October 20, 2023 12:41 PM
To: Ethan Szumanski <Ethan.Szumanski@oag.texas.gov>; Matt Miller <mmiller@texaspolicy.com>
Cc: Chance Weldon <cweldon@texaspolicy.com>; Nate Curtisi <ncurtisi@texaspolicy.com>; Rob Henneke <rhenneke@texaspolicy.com>; Ryan Walters <Ryan.Walters@oag.texas.gov>
Subject: 5:23cv34 - Texas v. Garland - Two-Week Continuance

All: In light of the court's notice, defendants plan to request a two-week continuance to November 13. Answering the additional questions posed by the court will require further consultation with agency clients and likely further declarations from the agencies. As you are also aware, I am now the only trial attorney on this matter, and I will need the two weeks to adequately prepare the declarations and for the hearing. Finally, a two-week continuance should not prejudice Texas; as the court stated on the record, this case does not appear to require immediate resolution or a hearing prior to November 13.

Does Texas consent to the requested two-week continuance? If so, I can prepare a short, joint filing. In light of the court's notice setting October 23 as the deadline to request a continuance, please let me know Texas's position by the end of the day.

Best,

Mike

From: Ethan Szumanski <Ethan.Szumanski@oag.texas.gov>
Sent: Monday, October 16, 2023 10:49 AM
To: Matt Miller <mmiller@texaspolicy.com>; Gaffney, Michael J. (CIV) <Michael.J.Gaffney@usdoj.gov>
Cc: Chance Weldon <cweldon@texaspolicy.com>; Nate Curtisi <ncurtisi@texaspolicy.com>; Rob Henneke <rhenneke@texaspolicy.com>; Ryan Walters <Ryan.Walters@oag.texas.gov>

Subject: [EXTERNAL] RE: 5:23cv34 - Texas v. Garland - Dial-In Info for Telephone Conference

All,

Texas is generally in agreement on the topics listed in the email below. For the first topic, we actually plan on telling the Court that our argument may last between an hour and an hour and half, but we hope to finish early, depending on how the arguments go. For the second topic, we intend to file declarations in support of our standing arguments, but we fully intend to provide those declarations to all parties to allow everyone enough time to prepare in anticipation of the hearing.

Best,



Ethan Szumanski
Special Counsel
Special Litigation Division
Office of the Texas Attorney General
P.O. Box 12548 (MC 009)
Austin, TX 78711-2548
Phone: (512) 717-1255
Fax: (512) 457-4410
ethan.szumanski@oag.texas.gov

From: Matt Miller <mmiller@texaspolicy.com>

Sent: Monday, October 16, 2023 9:41 AM

To: Gaffney, Michael J. (CIV) <Michael.J.Gaffney@usdoj.gov>

Cc: Chance Weldon <cweldon@texaspolicy.com>; Ethan Szumanski <Ethan.Szumanski@oag.texas.gov>; Nate Curtisi <ncurtisi@texaspolicy.com>; Rob Henneke <rhenneke@texaspolicy.com>; Ryan Walters <Ryan.Walters@oag.texas.gov>

Subject: Re: 5:23cv34 - Texas v. Garland - Dial-In Info for Telephone Conference

Thanks, Michael. We anticipate needing 40 minutes in total to present our side, so asking for a 90-minute hearing probably makes sense.

We agree that there are no disputed facts as to the merits questions. I will let the Texas AG's office confirm that no factual development is needed on standing.

Thanks,
Matt

On Oct 16, 2023, at 7:35 AM, Gaffney, Michael J. (CIV) <Michael.J.Gaffney@usdoj.gov> wrote:

EXTERNAL

Counsel,

I meant to send an email on Friday, but I have been traveling to/from El Paso for a family wedding.

In anticipation of this morning's status conference, I wanted to reach out to see if the parties are agreement on the topics listed in the court's order. On the first topic (amount of time the parties anticipate needing for their argument), the government will defer to the court, but anticipates requesting approximately 15-20 minutes each for standing/justiciability, irreparable harm, and the merits. On the second topic (whether the parties plan to present evidence), the government does not intend to do so, though it would reserve the right to do so in response if Texas does. In reviewing the filings again, the factual record appears to be undisputed. While the parties each filed an appendix, it does not look like the parties are contesting the factual bases for which those materials were filed.

Please let me know your thoughts and whether we can inform the court on this morning's call that the parties are in agreement on these two topics.

Best,

Mike Gaffney

From: Elizabeth Brown <Elizabeth_Brown@txnd.uscourts.gov>

Sent: Thursday, October 12, 2023 2:37 PM

To: cweldon@texaspolicy.com; ethan.szumanski@oag.texas.gov; mmiller@texaspolicy.com; ncurtisi@texaspolicy.com; rhenneke@texaspolicy.com; ryan.walters@oag.texas.gov; Gaffney, Michael J. (CIV) <Michael.J.Gaffney@usdoj.gov>

Subject: 5:23cv34 - Texas v. Garland - Dial-In Info for Telephone Conference

Counsel,

Below is the dial-in information for the telephonic conference set for Monday, October 16, 2023 at 10:00 a.m.:

USA Toll-Free Number: (888) 808-6929

USA Caller Paid/International Toll: (213) 787-0529

Access Code: 7164327

Regards,

Elizabeth Brown

Law Clerk to the Hon. James Wesley Hendrix

United States District Court for the Northern District of Texas

1205 Texas Avenue, Rm. C-210

Lubbock, Texas

(806) 318-7320 (chambers)